IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 30650 of 2004(W)

PETITIONER:

P.S. GEORGE, PARIYARATH HOUSE,
THURAVOOR P.O., ANGAMALY.

BY ADV. SRI.DINESH R.SHENOY
SMT.MINI GOPINATH

RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE
DISTRICT COLLECTOR, ERNAKULAM.

2. THE DEPUTY TAHSILDAR (REVENUE
RECOVERY), O/O. SPECIAL TAHSILDAR,
(REVENUE RECOVERY), ALUVA.

3. THE SPECIAL TAHSILDAR (LA),
EDAMALAYAR IRRIGATION PROJECT, ANGAMALY.

BY G.P. SMT.SMITHA SUKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE PHOTOCOPY OF REPRESENTATION DT.26.6.2000 SUBMITTED BY PETITIONER BEFORE R3.

P2: .DO. DT.28.12.2004 .DO. BEFORE R1.

P3: TRUE PHOTOCOPY OF LETTER DT.13.12.2000 ISSUED TO R3.

P4: TRUE PHOTOCOPY OF RECEIPT DT.20.4.2001 ISSUED BY R3 TO PETITIONER.

P5: TRUE PHOTOOCPY OF NOTICE DT.16.5.2003 ISSUED BY R3 TO PETITIONER.

P6: TRUE PHOTOCOPY OF REPRESENTATION DT.16.6.2003 FILED BY PETITIONER.

P7: TRUE PHOTOCOPY OF LETTER DT.15.7.2003 ISSUED BY R3.

P8: TRUE PHOTOCOPY OF NOTICE DT.3.9.2004 (SERVED ON 12.10.2004) ISSUED BY R2.

P9: TRUE PHOTOCOPY OF ORDER DT.22.12.1999 ISSUED BY ASSISTANT EXECUTIVE ENGINEER, I.I.P. SUB DIVISION NO.2, ANGAMALY.

P11: TRUE PHOTOCOPY OF NOTICE UNDER FORM NO.9B ISSUED BY R2.

P12: TRUE PHOTOCOPY OF REPLY ISSUED BY PETITIONER DT.29.3.2005.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.30650 of 2004

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Dated this the 19th day of November, 2007.

JUDGMENT

The District Collector, Ernakulam is impleaded as additional 4th respondent.

2. The petitioner is challenging Ext.P7 demand and Ext.P8 recovery proceedings for recovery of Rs.33,762/- being the excess compensation paid to the petitioner for acquisition of land, by mistake. It is seen that the extent of land acquired mentioned in the different proceedings issued by third respondent are different. Therefore, it is not possible for this court to assume the extent of land stated in any of these documents as correct. The case of the third respondent is that as against Rs.13,584/- payable to the petitioner towards compensation for the land acquired, he has been paid Rs.84,000/- on 15.12.1998. Even though counsel for the petitioner stated that there was a building in the acquired land and it is admitted in the counter affidavit, there is no mention about it in any of the proceedings. In any case petitioner admitted excess receipt of the amount referred to in Ext.P3 which is the first notice issued by third respondent whereunder an amount of Rs.36,654/- was demanded from the petitioner. The petitioner

has paid this amount. It is thereafter the third respondent came out with a revelation that a further sum of Rs.36,654/- has to be recovered from the petitioner as excess payment. It is against the second proceedings issued vide Ext.P7 that the petitioner approached this court challenging the same. I do not think this court can conduct physical verification of the extent of land acquired or correctness of the valuation and mistake if any in payment. The W.P. is accordingly disposed of directing the additional 4th respondent impleaded namely the District Collector, to call for the records, verify the same, hear the petitioner and issue proceedings determining the amount refundable by petitioner and if not, recalling the proceedings. The Collector should do it within a period of two months from the date of receipt of a copy of this judgment. The interim orders granted in favour of the petitioner will continue for four months from today. Thereafter recovery if any will be based on orders of the Collector. The petitioner will produce copy of this judgment before the Collector for compliance.

C.N.RAMACHANDRAN NAIR
Judge

pms